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October 25, 2007

VIA ELECTRONIC FILING (ECFS)

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-172: *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*

Dear Ms. Dortch:

Covad Communications Group and XO Communications, LLC, through counsel, submit for inclusion in the above-referenced docket the following filings of the United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA"), in proceedings before the New York State Public Service Commission and the Virginia State Corporation Commission. These filings unequivocally confirm that the Verizon Telephone Companies ("Verizon") continue to enjoy significant market power in the residential and enterprise markets and that competition is not sufficient to justify a grant of forbearance from Section 251(c)(3) loop and transport unbundling obligations in any of the six markets for which Verizon has requested such relief.

Specifically, by these filings, the United States government demonstrates that its own experience as a major enterprise customer of telecommunications services is that Verizon retains substantial market power in the areas subject to its pending forbearance petitions, that competition is not yet sufficient to restrain Verizon's exercise of market power, and that Verizon is increasing prices and reducing service quality as a result. The U.S. government further maintains at the state level that additional regulatory flexibility for Verizon will only exacerbate these problems. Given that the U.S. government, acting as a consumer, has experienced first-hand the failure of market forces to discipline Verizon's pricing and service quality, it is hard to fathom how the Commission could compound the problem by granting Verizon's pending forbearance petitions.

- Attachment A: *Tariff Filing of Verizon New York to Implement Pricing Flexibility for Non-Basic Services*, N.Y. Pub. Serv. Comm'n, Case No. 06-C-0897, Initial Comments of the United States Department of Defense and All Other Federal Executive Agencies (filed Oct. 22, 2007) ("NY Comments").

- Attachment B: *Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services Are Competitive and Deregulating and Detariffing of the Same*, Virginia State Corp. Comm'n, Case No. PUC-2007-00008, Post-Hearing Brief of the United States Department of Defense and All Other Federal Executive Agencies (filed Sept. 14, 2007) ("VA Brief").

The attached filings by DOD/FEA, a major consumer of telecommunications services throughout the Verizon incumbent service territory, demonstrate that it has reached the same conclusion reached by virtually every participant in the instant proceeding other than Verizon; *i.e.*, that actual competition within the retail markets for residential and enterprise telecommunications services is not sufficient to limit Verizon's pricing power. DOD/FEA details Verizon's recent actions to increase rates to business customers, particularly in the New York City area, and concludes that such actions prove Verizon retains substantial market power throughout its service area.[1] DOD/FEA points out that wireline competition has been *decreasing* in New York State and is unlikely to increase much (if at all) in the near future.[2] DOD/FEA similarly reports that in Virginia, Verizon has increased rates for residential services, generally by the full amount permitted under the cap for the current regulatory plan, and concludes that such rate increases occurred because "Verizon saw the opportunity to obtain increased revenue, and in its view the market forces were not great enough to prevent that outcome."[3]

DOD/FEA further notes the deficiencies in Verizon's service quality as reported by large and small business users and concludes that "[d]eficiencies in the quality of Verizon's services . . . also show that competition has been inadequate."[4] DOD/FEA maintains that Verizon is allowing its physical plant to deteriorate needlessly, and that this deterioration harms consumers, and, importantly, restrains competition.[5] For this additional reason, DOD/FEA concludes that

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1 NY Comments, at 7.

2 *Id.*, at 8-9.

3 VA Brief, at 9.

4 NY Comments, at 10.

5 VA Brief, at 19.

competition is not ready to substitute for continuing the current level of regulation of Verizon's services.[6]

Moreover, despite repeated claims by Verizon that sufficient competition from intermodal service providers exists to warrant forbearance from federal loop and transport unbundling obligations, the DOD/FEA filings confirm that the services offered today by wireless, cable, and Voice Over Internet Protocol ("VoIP") providers are not adequate substitutes for the local services provided by Verizon. DOD/FEA states that those services do not meet the needs of federal agencies, large businesses, or other enterprise users, and they do not diminish or constrain Verizon's persistent market dominance.[7]

The Commission must take notice both of DOD/FEA's first-hand experience with the failure of competitive forces alone to control Verizon's market power, and the DOD/FEA's advocacy at the state level that additional regulatory flexibility for Verizon would be premature. It would be strange indeed for the Commission to forbear from critical regulatory requirements at the federal level while, at the same time, the U.S. government as a consumer is urging state regulators to not grant similar regulatory relief at this time.

Respectfully submitted,

Genevieve Morelli

Counsel to Covad Communications Group and XO Communications, LLC

Attachments

6 *Id.*, at 21.

7 NY Comments, at 12-15; VA Brief, at 12-17.

ATTACHMENT A

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Tariff Filing of Verizon New York to Implement Pricing Flexibility for Non–Basic Services	Case No. 06–C–0897

INITIAL COMMENTS
of
THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

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Filing Date: October 22, 2007

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BEFORE THE

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Tariff Filing of Verizon New York to Implement Pricing Flexibility for Non–Basic Services	Case No. 06–C–0897

INITIAL COMMENTS

of

THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

I. INTRODUCTION

On May 21, 2007, Verizon New York Inc. ("Verizon") filed tariff amendments with the Public Service Commission ("Commission") to implement "limited" pricing flexibility for most business telecommunications services in New York.[1] The company seeks to take "at least preliminary steps towards the greater regulatory flexibility enjoyed by its competitors in the market for retail business services.[2]

On September 14, 2007, Verizon made a "Supplemental Fling in Support of Increased Pricing Flexibility for Business Services."[3] In that filing, the company offered additional comments on its assessment of competition in this state.

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1 Verizon Tariff Filing to Implement Limited Pricing Flexibility for Retail Business Services, May 21, 2007 ("Initial Filing").

2 *Id.*, Attachment 1: Description and Justification, p. 2.

3 Supplemental Filing of Verizon New York in Support of Increased Pricing Flexibility for Retail Business Services, September 14, 2007.

On September 26, 2007, the Commission issued a "Notice Soliciting Comments" from all parties with interests in telecommunications services.[4] In the Notice, the Commission invited Initial Comments and Reply Comments on Verizon's filings.

The United States Department of Defense and All Other Federal Executive Agencies ("DOD/FEA") is a major consumer of telecommunications services. DOD/FEA provides these Initial Comments on Verizon's proposals from its perspective as a large and diverse business user of services provided by Verizon and other telecommunications carriers in New York.

II. DOD/FEA URGES THE COMMISSION TO REJECT VERIZON'S REQUEST FOR GREATER PRICING FLEXIBILITY IN NEW YORK.

Contrary to Verizon's claims, the company's request is not a "preliminary" or "limited" step. Indeed, the company is seeking great more pricing flexibility. Furthermore, there is no evidence that the company's proposals will help more competition to develop, or help to reduce the costs for telecommunications services, or provide any other tangible benefits to consumers in New York.

Verizon seeks pricing flexibility for all retail business services with the exception of Public Access Lines with specific rates set by the Commission on June 30, 2006.[5] The company could implement price changes for all other retail business services, without approval by the Commission, on one–day's notice.[6] Moreover, the company's charges for any individual rate element, except message rate access lines ("1MB service") could be increased up to 25 percent in any year.[7] Rate increases for 1MB

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4 Notice Soliciting Comments, September 26, 2007.

5 Initial Filing, Description and Justification, p. 2.

6 *Id.*

7 *Id.*

service would be limited to 10 percent annually.[8] In addition, Verizon requests "no substantive restrictions" on downward pricing flexibility.[9]

As a consumer in New York, DOD/FEA urges the Commission to deny Verizon's request to sharply reduce surveillance of retail services until it becomes clear that this step will increase competition for telecommunications services in New York State. As explained in these Initial Comments, Enterprise users such as federal agencies need more competition for retail services. Verizon focuses on the availability of alternative services.[10] However, there are several indications that actual competition is inadequate.

In the first place, competition has not been sufficient to limit Verizon's pricing power. As explained in these Initial Comments, Verizon has been increasing its rates and charges for telecommunications services. If there were strong competition, as Verizon contends, the company would not be increasing its prices, but would be forced to reduce them to meet the efforts of its competitors.

Moreover, there is evidence that the quality of Verizon's services has been deficient. If there were strong competition, as Verizon asserts, the company would be forced to maintain high quality services so that customers do not switch to competitors.

Verizon explains that much of the competition in New York State is by firms relying primarily on alternative platforms. Verizon describes "available" competition by wireless networks, broadband networks and application–based Voice over Internet Protocol ("VoIP") services, satellite service providers, and cable company networks.[11]

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8 *Id.*

9 *Id.*

10 Supplemental Filing of Verizon New York in Support of Increased Pricing Flexibility for Retail Business Services, pp. 13–15.

11 *Id.*, pp. 9–28.

However, as DOD/FEA explains in these Initial Comments, intermodal competition often has a number of major shortcomings, especially for business users.

III. AS ENTERPRISE CUSTOMERS, FEDERAL AGENCIES HAVE A VITAL INTEREST IN DEVELOPING MORE COMPETITION FOR TELECOMMUNICATIONS SERVICES.

A. Consumers who obtain telecommunications services through contracts are concerned with the rates, terms and conditions for retail services.

Federal agencies are required to procure telecommunications through competitive bidding procedures whenever possible. The use of competitive procurement procedures, which are designed to ensure that agencies receive the best possible services at the lowest possible costs, gives DOD/FEA a major stake in the outcome of this case.

First, this case is focused on the level of <u>competition</u> among providers of telecommunications services in New York State. More competition is critical to contract users, because the competitive bidding process works best, resulting in lower prices and better services, if there are more potential competitors. A competitive procurement process does not achieve its objectives if there if only one firm in the market.

Second, users who procure services through contracts are concerned with the <u>retail prices</u> for services obtained one–by–one or in small quantities. At least implicitly, retail rates set a floor for contract rates. Basically, in return for procuring a larger quantity, procuring for a longer term, or meeting other conditions, the contract user usually gets a lower price. Indeed, contract prices are often compared informally with "tariff rates" as a measure of the savings achieved through the contracting process. Consequently, all else being equal, reductions in retail rates will result in reductions in contract prices over time. Conversely, increases in retail rates will result in increases in contract prices. Thus, federal agencies obtaining telecommunications through contracts have a financial interest in the prices for services provided at minimum volumes throughout the state.

Third, this case concerns the quality of telecommunications services in New York. Service quality is not only a localized concern. A business user with a contract to obtain a volume of service at a given location may have leverage over the quality of service at that location or other locations covered by the contract. However, there are two ends to any call. A business user makes calls to and receives calls from business residential users who are not under contract, many of whom are receiving telecommunications from Verizon. The quality of the services rendered at these off–net points has a direct impact on the quality of communications for the contract user.

Moreover, Federal Executive Agencies have many requirements for a wide variety of voice and data communications with individuals and commercial organizations, as well as state and local government agencies, in order to perform their missions and meet their responsibilities to the public. Thus, federal agencies have a direct interest in all aspects of the quality of services provided by Verizon throughout its entire network.

B. Federal agencies have telecommunications requirements at a variety of locations throughout New York State.

Federal offices and facilities are situated at many types of locations in New York State. Periodically, the Office of Personnel Management ("OPM") tabulates data on employment at federal facilities, by county, throughout the U.S. The most recent publication was for December 2002.[12] According to that OPM report, total federal civilian employment in New York State was about 139,400 persons, including more than

12 U.S. Office of Personnel Management, "Federal Employment Statistics – December 31, 2002", available at <www.opm.gov/feddata>

11,900 employees of DOD.[13] Also, in addition to civilian employees, there were a substantial number of uniformed personnel at military installations in the state.

Federal employees were located in nearly every county. New York County had the largest number — more than 31,000 persons. The five counties comprising New York City had about 63,500 federal civilian employees, which is just under half of the statewide total.

Moreover, many federal offices and facilities are located outside of metropolitan areas. The Department of Agriculture, the Department of Health and Human Services, the Social Security Administration, and the Department of Veterans Affairs are examples of Federal Executive Agencies that have frequent contact with members of the "public" and therefore often locate facilities in smaller communities within and outside of the principal business areas.

For example, the OPM Report shows that the Department of Health and Human Services had 35 employees in Albany County and 12 employees in Westchester County, while the Social Security Administration had 26 employees in Rockland County and 35 in Orange County.[14] Also, some DOD installations such as recruiting offices for the various armed forces are frequently located far from major office buildings.

From DOD/FEA's experience, competition has lagged outside of major business centers, but federal agencies need more competition for highly reliable services at all types of locations in New York State. Therefore, DOD/FEA urges the Commission to ensure that there is ample competition throughout Verizon's entire service area in New York State before approving any request for statewide pricing flexibility for the company's retail services.

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13 *Id.*, Statistics from Table 5; Federal Civilian Employment in the U.S. by State, County and Selected Agency.

14 *Id.*

IV. VERIZON'S PRICING POLICIES PROVIDE EVIDENCE OF THE COMPANY'S SUBSTANTIAL MARKET POWER.

A. Verizon's request for great pricing flexibility is not consistent with its claims concerning competition in New York.

Market power is the ability of a firm to change the market prices of its goods or services. A firm with substantial market power can raise prices without losing its customers to competitors. Verizon's recent actions to increase charges for services to its business users, particularly users in the New York City area where competition should be the most intense, show that the company still has a great deal of market power throughout its service area.

Verizon's Corporate Rewards Program is an optional calling plan designed for Enterprise customers.[15] The plan provides discounts depending on the customer's aggregate monthly local and toll usage. The Corporate Rewards Program in available throughout New York State, but Verizon indicates that the majority of the customers for this plan are located in the New York Metropolitan Local Transport Area.[16]

On January 5, 2007, Verizon filed tariff revisions to reduce the discounts associated with the local and toll rates in the Corporate Rewards Program, resulting in a rate increase for participants.[17] The tariff was allowed to go into effect by operation of law on February 19, 2007.[18]

With this backdrop of rate increases, Verizon is seeking even greater pricing flexibility. The company seeks authority to increase the recurring and/or non–recurring charges for nearly all business services by 25 percent in a 12–month period. DOD/FEA submits that 25 percent is a substantial increase for nearly any user. Moreover, a

15 Case No. 07–C–0030, Order Issued and Effective February 28, 2007, p. 1.

16 *Id.*, pp. 1–2.

17 *Id.*, p. 1.

18 *Id.*

request for this level of upward pricing flexibility is totally at odds with the company's assertions that competition is "vigorous, pervasive and permanently entrenched."[19]

B. Wireline competition has been declining in New York State.

The focus of this Commission proceeding is on wireline telecommunications competition because Verizon's proposals concern the company's wireline services in New York. Unfortunately, however, there is not as much wireline competition as federal agencies would like in order to help control telecommunications prices.

The Wireline Competition Bureau of the Federal Communications Commission ("FCC") publishes a semi–annual report showing the extent of wireline competition in each jurisdiction. The FCC's most recent "Local Telephone Competition Report," shows that competitive LECs had a total share of 27 percent of the market in New York State as of June 30, 2006.[20] Twenty–seven percent may appear to be a great deal of competition, particularly when compared with the fact that competition was virtually zero a little more than a decade ago. However, even a 27 percent share means that the market leader is serving more than two times as many lines as all of its competitors in total — not two times as many as its largest competitor, but two times as many as all competitors combined. By any reasonable standard, the incumbent has great market power.[21]

Moreover, wireline competition has not been increasing. Indeed, for the first half of 2006, there was a decline in the amount of competition in New York State, because

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19 Initial Filing, Description and Justification, p. 2.

20 Federal Communications Commission, Industry Analysis and Technology Division, *Local Telephone Competition as of June 30, 2006*, Table 7.

21 *Id.*

the prior "Local Telephone Competition" report shows that on December 31, 2005, the competitive LECs' total share in New York was 31 percent.[22]

Also, it is unlikely that wireline competition will increase much in the near future. There are two important reasons for the lack of growth. First, mergers have eliminated alternative suppliers of telecommunications services. For example, Verizon was permitted to combine with GTE, and later MCI. Until recently, MCI was an active competitor to the incumbent Verizon. However, MCI is now missing from New York as a competitive LEC.

Another important reason for the lack of robust competition is the elimination of the Unbundled Network Element Platform ("UNE-P"). The figures in the FCC's Local Competition Report include competition through all three modes identified in the *Telecommunications Act of 1996.*[23] Specifically, the competitors' share includes activities: 1) by offering services with their own facilities; 2) through resale of incumbent LECs' services; and 3) by using unbundled network elements ("UNEs"). Among these three modes, UNEs have been the most often used, and the prospects for this mode of competition are dim. UNE–Ps had been used by competitors for a large part of their service to end users, but court and FCC decisions have resulted in eliminating the availability of UNE–P rates to competitors.

Moreover, Verizon's plan to grant the company virtually unlimited downward pricing flexibility will not improve the competitive environment. Verizon should certainly be encouraged to reduce prices in order to meet the prices offered by its competitors, because this action will also benefit consumers. However, Verizon should not be

22 Comments of DOD/FEA, June 7, 2007, p. 7, citing Federal Communications Commission, Industry Analysis and Technology Division, *Local Telephone Competition as of December 31, 2005,* Table 7.

23 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("*Telecommunications Act of 1996*").

permitted to set prices below its own incremental costs. Such "predatory" actions to drive away competitors will not benefit consumers, but simply increase Verizon's market power by further eliminating competitive options.

V. DEFICIENCIES IN VERIZON'S SERVICE QUALITY ALSO SHOW THE NEED TO MAINTAIN REGULATORY SURVEILLANCE.

A. ARMIS surveys show dissatisfaction among large and small business users.

Deficiencies in the quality of Verizon's services in New York State also show that competition has been inadequate. Reports to the FCC indicate dissatisfaction among end users, and frequent trouble reports demonstrate the need to maintain close regulatory surveillance of the company's activities.

The FCC initiated the Automated Reporting Management Information System ("ARMIS") in 1987 to collect data from carriers providing local telephone services throughout the U.S. All local carriers with annual revenues exceeding an established threshold that are under mandatory price cap regulation or make a non–revocable election to be under price cap regulation are required to file ARMIS reports with the FCC.

One of the ARMIS reports, the Customer Satisfaction Survey (ARMIS Report 43–06), displays the percentage of customers who are not satisfied with the company's services. Carriers must separately query customers regarding their "dissatisfaction" with installation activities, repair activities, and their contacts with the company's business offices.

Verizon submits separate Customer Satisfaction Survey results for each of the states where it provides local services as the incumbent LEC. For most jurisdictions, including New York, results are reported separately for large business customers, small business customers, and residence customers. Verizon's 2006 Customer Satisfaction Survey for New York State had the following results.[24]

- Installation Activities: 32.41 percent of large business users, and 9.90 percent of small business users were dissatisfied.
- Repair Activities: 17.59 percent of large business users, and 12.44 percent of small business users were dissatisfied.
- Business Office Contacts: 41.05 percent of large business users, and 6.79 percent of small business users were dissatisfied.

These high percentages of dissatisfied customers, particularly large business users, are a strong reason to deny the company's request for increased pricing flexibility for retail business services.

B. Another ARMIS report shows shortcomings in Verizon's service quality.

Another ARMIS report, the Service Quality Report (ARMIS Report 43–05), displays data concerning the quality of local services provided by carriers. Verizon submits this report annually, displaying services for each state where it provides local services as the incumbent LEC.

Measures in the ARMIS Service Quality Report include the number of Initial Trouble Reports and the Number of Repeat Reports for local service. For 2006, Verizon noted 360,113 Initial Trouble Reports and 73,057 Repeat Trouble Reports for its 3,061,117 Business Access Lines in New York State.[25] This equates to 14.15 reports per 100 business lines. The New York malfunction rate is high. As one basis of comparison, for the same year, Verizon's ARMIS report shows 17,726 Initial and Report Trouble reports for the company's 651,356 Business Access Lines in the District of

24 <http://fjallfoss.fcc.gov/eafs7/paper/43-06/PaperReport06.cfm>.

25 <http://fjallfoss.fcc.gov/eafs7/paper/43-05/PaperReport05.cfm>.

Columbia.[26] The District of Columbia rate is 2.72 reports per 100 business lines, less than 20 percent of the New York rate.

Verizon's Service Quality Report also tabulates the number of formal complaints regarding jurisdictional services to business and residence customers. Possibly as a result of performance shortcomings such as those cited above, Verizon's operations in New York also fared badly on the basis of formal complaints in 2006. The ARMIS report shows that for 2006, there were 72 complaints by business users and 308 complaints by residence users concerning Verizon New York services.[27] This is an increase from 68 complaints by business users and 245 complaints by residence users during the previous year.[28]

VI. DESPITE VERIZON'S CLAIMS, MOST BUSINESS USERS CANNOT SUBSTITUTE OTHER TECHNOLOGIES FOR CONVENTIONAL WIRELINE SERVICES.

A. Intermodal alternatives are not a substitute for most business users.

Wireline competition has been constrained by mergers and by changes in the rules regarding the UNE–P. Consequently, much of the "new" competition is by firms using alternative platforms. However, when looking at intermodal competition, it is important to distinguish between services to residential users and services to business users. Unfortunately, business users often do not benefit as much as residential users from intermodal competition.

The Initial Comments of Conversent Communications of New York in Case No. 05–0616, presented a study by Economics and Technology, Inc. ("ETI") examining

26 *Id.*

27 *Id.*

28 *Id.*

whether Intermodal competition can be considered a substitute by small and medium–sized business customers for wireline service by incumbent LECs.[29] In the initial paragraph of the Executive Summary, the ETI Report states, "Contrary to popular opinion, for the vast majority of business subscribers in the state of New York, Intermodal telecommunications services do not represent a viable *substitute* for the traditional landline offerings of the incumbent local exchange carriers and, as such, do nothing to diminish or to constrain the market power of the incumbent provider (which in most cases, is Verizon)."[30] DOD/FEA concurs with this statement.

B Wireless is often not suitable for business applications.

Verizon contends that networks providing mobile wireless coverage are available ubiquitously throughout the State.[31] However, mobile wireless is not <u>replacing</u> wireline for business users. Certainly, a large percentage of businesses in New York use wireless services. However, the percentage of businesses and government agencies that have "cut the cord" and abandoned wireline service is *de minimus*. Although people working in some occupations, such as sales, installation and maintenance, make extensive use of cell phones, most business users of any size require one or more wireline connections at their "home base."

Indeed, a wireline phone is regarded as essential for a place of work. Lack of directory listings which give information to customers and others, E911 service location differences, and "dead zones" with unreliable or low quality connections are among the factors that make wireless a "complement" instead of a "substitute" for wireline services

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29 Case No. 05–C–0616, Initial Comments of Conversent Communications of New York, LLC, August 12, 2005, Exhibit A entitled "Hold the Phone: Debunking the Myth of Inter–Model Alternatives for Business Telecom Users in New York," published by Economics and Technology, Inc., Boston, Massachusetts, August 2005 ("ETI Report").

30 ETI Report, p. ii (emphasis in original).

31 Supplemental Filing of Verizon New York in Support of Increased Pricing Flexibility for Retail Business Services, p. 9.

needed by many business consumers. Moreover, for some business consumers such as federal agencies, reduced security because of the ability of other parties to monitor wireless transmissions is also an important consideration.

In addition, Verizon is largely competing with itself with respect to the cell phone market. Verizon Wireless is one of largest providers in the U.S. The market share of this company should to be particularly high in states such as New York where Verizon is the predominant wireline provider.

C. Cable services are primarily targeted to residential consumers.

Verizon states that "cable companies advertise themselves as being able to meet the needs of all segments of the business market."[32] However, services offered by cable companies are often not a significant part of the competitive marketplace for business and government users. Since cable companies have been providing entertainment services to families over the years, cable companies are better positioned to market telecom services to residential users through sales promotions. For example, cable companies often employ the "Triple Play" strategy of Entertainment, High–Speed Internet Access, and Digital Telephony as a combined service offering at a package price.

A user who does not want all of the elements of a package is paying for unneeded services. For example, many businesses and government agencies do not want to have commercial "television" in their facilities because of potential distractions to employees. Thus, packages with this component are not as attractive to business consumers.

Moreover, cable telephony has additional shortcomings for businesses. For example, as with wireless, there are no directory listings. Also, cable services, unlike

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32 *Id.*, p. 15.

traditional wireline telephone services, are disabled by localized power outages, making cable a questionable choice for businesses and government agencies that must have the highest possible availability.

D. VoIP also has shortcomings for many business users.

Similarly, "over–the–top" VoIP services have a number of shortcomings that many business users must consider. Deficiencies include lack of directory listings and susceptibility to localized electric power outages. Also, use of VoIP may depend on the operational status of the subscriber's computer, or in the case of a larger business customer, the subscriber's computer network. If there are "computer problems," VoIP service may be curtailed for a long time while the problems are addressed.

Moreover, if VoIP access is required at multiple locations, the business user would need to acquire multiple dedicated broadband connections, which would typically involve charges for each access point of two or three hundred dollars a month or more, depending on the distance between the user's location and the serving telephone company central office. Thus, VoIP is rarely a substitute for wireline telephone service for businesses, even if it were equivalent in functionality.

VII. CONCLUSION

WHEREFORE, the premises considered, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Commission to adopt the recommendations in these Initial Comments.

Respectfully submitted,

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for

The U.S. Department Of Defense
and
All Other Federal Executive Agencies

Filing Date: October 22, 2007

ATTACHMENT B

BEFORE THE
COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF VERIZON VIRGINIA INC. AND VERIZON SOUTH INC. For a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same	Case No. PUC–2007–00008

POST–HEARING BRIEF
of
THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

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by

PETER Q. NYCE, JR.
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September 14, 2007

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A. Consumers who obtain telecommunications services through contracts are vitally concerned with the rates, terms and conditions for retail services. 4

B. DOD and other FEAs have communications requirements at a variety of locations throughout Verizon's service area. 7

IV. VERIZON'S PRICING POLICIES PROVIDE EVIDENCE OF THE COMPANY'S SUBSTANTIAL MARKET POWER. 9

A. In 2006, Verizon increased its charges for individual services and packages. 9

B. Verizon's proposals for additional increases in 2006 were not based on the costs to provide its services. 10

V. DESPITE VERIZON'S CLAIMS, SOME ENTERPRISE CUSTOMERS CANNOT SUBSTITUTE OTHER TECHNOLOGIES FOR CONVENTIONAL WIRELINE SERVICES. 12

A. Wireless services are not a substitute for most business users. 12

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BEFORE THE
COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF VERIZON VIRGINIA INC. AND VERIZON SOUTH INC. For a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same	Case No. PUC–2007–00008

POST–HEARING BRIEF
of
THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

I. INTRODUCTION

The United States Department of Defense and All Other Federal Executive Agencies ("DOD/FEA") participated throughout this proceeding to address an Application and testimony filed by Verizon Virginia, Inc. and Verizon South, Inc. ("Verizon") on January 17, 2007. In its Application and testimony, Verizon asked the Commission to find that nearly all of its retail services are "Competitive."[1] The company also requested that the Commission "deregulate" and "detariff" all of these Competitive services. The only services for which Verizon does not seek a "Competitive" classification are switched access, special access, E–911, and Lifeline services.[2]

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1 Order for Notice and Hearing, February 7, 2007, p. 1.

2 *Id.*

Verizon acknowledges that Virginia statutes do not define "deregulation."[3] However, Verizon states that it is basically asking the Commission to exempt services from any Alternative Regulation Plan.[4] Once so "deregulated", the services would be subject only to the safeguards that "the Commission deems necessary to protect consumers and competitive markets."[5]

According to Verizon, the necessary safeguards are few. The company contends that adequate surveillance would be provided by the Commission's complaint process, the Commission's dispute resolution process, federal rules regarding interconnection, and the company's Carrier–to–Carrier Guidelines and Performance Assurance Plan.[6] The only additional constraints that Verizon would continue are to tariff Lifeline and E–911 services, to keep the existing Service Quality Rules in effect, to mirror the cross–subsidy filing requirement that the Commission has imposed on competitive LECs, and to cap increases for residential dialtone with unlimited usage to no more than one dollar per year for three years.[7]

Verizon's proposals to virtually eliminate regulatory surveillance are a vital concern to DOD/FEA as a major user of telecommunications services provided by this carrier and other carriers in Virginia. Consequently, DOD/FEA pre–filed the direct testimony of its expert witness to provide conclusions and recommendations concerning Verizon's proposals.[8]

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3 Verizon Application, January 17, 2007, ("Exhibit No. 2"), p. 18.

4 *Id.*, p. 19.

5 *Id.*

6 *Id.*, pp. 20–21.

7 *Id.*

8 Direct Testimony of Harry Gildea, June 1, 2007, ("Exhibit No. 112").

II. DOD/FEA URGES THE COMMISSION TO REJECT VERIZON'S PROPOSALS.

In his direct testimony, DOD/FEA's witness recommended that the Commission reject Verizon's proposals for a number of reasons.[9] A primary reason for rejecting the proposals is that competition has been insufficient to constrain Verizon's prices. DOD/FEA's witness stated that in the past year and a half the company has applied to the Commission to change and restructure the rates and charges for many services offered by Verizon Virginia and Verizon South.[10] Verizon's recent rate proposals concerned message charges, measured charges, charges for directory assistance calls, and other charges.[11] DOD/FEA's witness explained that if there were a great deal of effective competition, as Verizon contends, the company would not be seeking to increase its rates, but would be forced to reduce them to match the charges for other carriers' offerings.[12]

DOD/FEA's witness also explained that in a number of instances, Verizon's pre–filed testimony exaggerates the extent of competition, focusing on competitive options which may or may not be suitable for end users.[13] He explained that much of the "new competition" is intermodal.[14] However, much of the intermodal service (such as wireless) is a <u>complement</u> rather than a <u>substitute</u> for wireline, and some of the intermodal service (such as Voice over Internet Protocol) is useful for certain users but <u>not others</u>.[15] Clearly, the extent of competition varies by location, by service, and by the size and nature of an end user's requirements, but whatever the level of competition

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9 *Id*, p. 3.

10 *Id*., p. 16.

11 *Id*.

12 *Id*., p. 17.

13 *Id*., pp. 9–10.

14 *Id*., pp. 13–15.

15 *Id*.

that Verizon has experienced, the competition has not been sufficient to control the prices for the company's services.

Finally, DOD/FEA's witness explained that another reason for rejecting Verizon's Application is that the steps Verizon is proposing will not increase the amount of competition in Virginia.[16] The witness noted that in April 2007, two of Verizon's competitors filed Comments with the Commission concerning Verizon's Application.[17] Both of these companies noted that Verizon was taking steps to diminish competition. This is a very disappointing observation from the perspective of DOD/FEA, a Virginia consumer interested in increasing the extent of competition for services provided by all carriers to all types of users in the Commonwealth.

III. AS ENTERPRISE CUSTOMERS, FEDERAL AGENCIES HAVE A SIGNIFICANT STAKE IN THE OUTCOME OF THIS CASE.

A. Consumers who obtain telecommunications services through contracts are vitally concerned with the rates, terms and conditions for retail services.

Based on its discovery and the cross–examination of DOD/FEA's witness, Verizon's focus in this case has been more on DOD/FEA's business interests in this proceeding, rather than the substantive content of DOD/FEA's testimony. For example, Verizon's first step with respect to DOD/FEA in this proceeding was to propound a "First Set of Interrogatories to the Department of the Army" on April 19, 2007.

The "First Set of Interrogatories to the Department of the Army" consisted of 10 questions, VZ–ARMY–1 though VZ–ARMY–10, all dealing with competitive bids by the Army and the Army's competitive procurement process. Verizon later filed a "Second Set of Interrogatories to the Department of the Army" dealing with DOD/FEA's testimony. Then, on July 6, 2007, Verizon apparently came to the conclusion that

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16 *Id.*, pp. 18–21.

17 *Id.*, pp. 18–19.

DOD/FEA's participation in this case extended well beyond the Army, and accordingly filed its "First Set of Interrogatories to the Department of Defense and All Other Federal Executive Agencies" and a "Third Set of Interrogates to the Department of the Army". The "First Set of Interrogatories to the Department of Defense and All Other Federal Executive Agencies" consisted of 10 questions similar to those in the initial set to the Army, but focusing on the bidding process for the Department of Defense and the federal civilian agencies more broadly.

During its examination of DOD/FEA's witness at the evidentiary hearings on July 26, 2007, Verizon focused on the federal government's use of contracts for services obtained through a competitive bidding process. For example, Verizon introduced Exhibit Nos. 113, 114, 115, 116, 117 and 119, all dealing with the Army's competitive procurements at installations such as Fort Lee, Fort Monroe, Fort Eustis, and Fort Storey in Virginia. Also, Verizon introduced Exhibit No. 122, dealing with the recent nationwide procurement by the U.S. General Services Administration for telecommunications services to replace expiring Federal Telecommunications Service contracts and certain federal wireless contracts for services throughout the nation. Additionally, Verizon introduced Exhibit No. 121 concerning a procurement by the U.S Social Security Administration in a "Telephone System Replacement Project" for that agency.

DOD/FEA acknowledges that federal agencies procure telecommunications services, particularly services for larger quantities at major installations, through contracts obtained with competitive bids whenever possible. However, any claim that this procedure detracts from DOD/FEA's interest in this case could not be farther from the truth.

In the first place, this case is about increasing competition. More competition is critical to contract users, because the bidding process works best, resulting in lower prices and better services, if there are more potential competitors, and it does not work at all if there if only one firm in the market.

Second, as witnesses for the Communications Workers of America ("CWA") observed in their testimonies, this case concerns the quality of telecommunications services in Virginia.[18] Service quality is not only a localized concern. A business user under contract who obtains a larger volume of service at a given location may have leverage over the quality of service at that location or other locations covered by the contract. However, there are two ends to any call. A business user makes calls to and receives calls from other business users and residential users who are not under contract, many of whom are receiving telecommunications services from Verizon. The quality of the services rendered to these off–net points has a direct impact on the quality of communications for the contract user.

Federal Executive Agencies, both within and outside DOD, have many requirements to communicate with individuals, commercial organizations, and state and local government agencies in order to perform their missions and meet their responsibilities to the public. Thus, federal agencies have a direct interest in virtually all aspects of the quality of services provided by Verizon throughout its network.

Third, in addition to concerns with the quality of telecommunications services throughout Virginia, users who procure services under contracts are concerned with the retail prices for services obtained one–by–one or in small quantities. At least implicitly, retail rates set a floor for contract rates. Basically, in return for procuring a larger quantity, or procuring for a longer term, or meeting other conditions, the contract user gets a lower price. Indeed, contract prices are often judged or compared informally with "tariff rates" as a measure of savings achieved through the contracting process. Consequently, all else being equal, reductions in retail rates will result in reductions in

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18 Direct Testimony of Charles Buttiglieri, June 1, 2007 ("Exhibit No. 127") and Direct Testimony of Bion C. Ostander, June 1, 2007 ("Exhibit No. 126").

contract prices, over time. Conversely, increases in retail rates will result in increases in contract prices, over time. Thus, federal agencies with contracts have a financial interest in the prices for services provided at minimum volumes throughout the Commonwealth.

B. DOD and other FEAs have communications requirements at a variety of locations throughout Verizon's service area.

Organizations in the Department of Defense and other departments maintain a wide range of facilities with diverse telecommunications needs throughout Virginia. Facilities such as the Pentagon and other large military installations come to mind readily because they are highly visible, but DOD/FEA uses telecommunications services at hundreds of places in Virginia.

In his testimony, a Verizon witness emphasizes that DOD and Fairfax County are enterprise customers whose discovery responses indicate that competition is "thriving" for their business.[19] However, even at larger installations, there is often not as much competition as one might believe. DOD/FEA's response to VZ–ARMY–3 was introduced by Verizon as Exhibit No. 115. This exhibit shows that the Army received <u>four responses</u> in a solicitation for telecommunications services at Fort Lee and <u>five responses</u> for telecommunications services at Fort Monroe. DOD/FEA submits that four or five responses does not rise to the level of "thriving" competition for a contract to provide services to a large military installation for several years.

The Office of Personnel Management ("OPM") periodically tabulates data on federal government facilities, by county, throughout the U.S. The most recent publication was for December 2002.[20] According to that OPM report, total federal

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19 Rebuttal Testimony of Mark S. Calnon, July 16, 2007, ("Exhibit No. 270"), p. 19.

20 U.S. Office of Personnel Management, "Federal Employment Statistics – December 31, 2002", available at <www.opm.gov/feddata>.

civilian employment for all agencies in Virginia was about 143,200 persons.[21] The total for Virginia includes 31,400 persons working in Arlington County, 15,900 in Fairfax County, and 12,700 in Norfolk. These places are urban areas that a Verizon witness characterized as having "intense and mature" competition.[22] However, total civilian employment in Virginia also includes 1,300 persons in Charlottesville and 600 persons in Accomack County on the Eastern Shore, which are places with a lesser level of competition that the Verizon witness characterized as "present and expanding."[23]

Facilities of the Army, Navy and Air Force in many of Virginia's communities include small recruiting offices. Moreover, DOD/FEA's participation in this case is for All Federal Executive Agencies, and many agencies other than DOD have facilities of various sizes throughout the Commonwealth. For example, the Department of Agriculture and the Department of the Interior are Federal Executive Agencies that have a great deal of contact with members of the "public" and therefore have numerous facilities in large and small communities.

The OPM report shows that the Department of Agriculture ("DOA") had 2,250 employees in Virginia. These employees worked in 63 of Virginia's 95 counties and 30 of Virginia's 39 independent cities.[24] Additionally, the Department of the Interior ("DOI") had 3,800 employees in the Commonwealth. These persons worked in 30 counties and 11 independent cities.[25] Assuming only one facility for DOA and DOI in a county or independent city, division of the employee total by the number of locations shows that

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21 *Id.*, Table 5, Federal Civilian Employment in the U.S. by State, County and Selected Agency.

22 Direct Testimony of Jeffrey A. Eisenach, January 17, 2007 ("Exhibit No. 67"), p. 3.

23 *Id.*, p. 4.

24 U.S. Office of Personnel Management, "Federal Employment Statistics – December 31, 2002", Table 5, Federal Civilian Employment in the U.S. by State, County and Selected Agency.

25 *Id.*

they average considerably less than 100 employee at a location. Thus, most individual DOA and DOI locations would have the characteristics of a smaller business user.

IV. VERIZON'S PRICING POLICIES PROVIDE EVIDENCE OF THE COMPANY'S SUBSTANTIAL MARKET POWER.

A. In 2006, Verizon increased its charges for individual services and packages.

A witness for the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel") explains that Verizon has increased rates for residential services, generally by the full amount permitted under the cap for the current regulatory plan.[26] Also, the Consumer Counsel's witness explains that Verizon's rate increases have not been limited to basic local services. Verizon has also raised charges for its packages, including its "Verizon Freedom" offerings.[27] Indeed, the monthly charges for the two "Freedom" packages were increased by 12.5 percent and 14.3 percent, respectively, during 2006.[28]

The Consumer Counsel's witness also explains that if market forces were constraining prices for local exchange services, consumers would be strongly motivated to switch service providers, so that Verizon would have to exercise pricing restraint.[29] DOD/FEA concurs with Consumer Counsel's assessment. In fact, DOD/FEA's witness made the same observation in his testimony concerning proposals by Verizon to increase the rates and charges for additional services.[30]

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26 Direct Testimony of Trevor R. Roycroft, June 1, 2007 ("Exhibit No. 129"), p. 118.

27 *Id.*

28 *Id.*

29 *Id.*

30 Exhibit No. 112, p. 17.

B. Verizon's proposals for additional increases in 2006 were not based on the costs to provide its services.

DOD/FEA's witness explained that in early 2006, Verizon Virginia and Verizon South filed an Application with the Commission to change and restructure the rates and charges for services offered by both of these units.[31] The proposals were designed "to offset in part, Verizon's $52 million reduction in annual access charge revenues by modifying certain local exchange rates and thereby increasing revenues by approximately $15 million."[32] The proposals eliminated disparities between the rates of the two Verizon companies for message unit charges, measured charges, and certain other services.[33] For example, the company proposed to increase message unit charges to a uniform 10.5 cents from 9.6 cents for Verizon Virginia and 8.0 cents for Verizon South.[34] Also among the proposed changes were increases in charges for directory assistance services. For example, in the "Verizon Virginia territory" the free call allowance for directory assistance was reduced from 3 to 2 calls for residential customers, and from 3 to zero calls for business customers.[35]

As DOD/FEA's witness explained, it is significant that Verizon sought the same local message charge for its two major units.[36] An important effect of competition is to drive rates to <u>costs</u>. Considering the disparities in population density, it is virtually certain that the costs to provide local services are not the same for the territory of Verizon South as for the territory of Verizon Virginia. Also, the levels of competition are not the same in these two areas. Thus, again, there is an indication that competition is not exerting much influence on Verizon's pricing practices, particularly because the

31 *Id.*, p, 16.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*, p. 2.

36 *Id.*

company apparently believed that factual support or documentation was not necessary.[37]

In its Application for rate increases in 2006, Verizon does not even attempt to justify its proposed rate charges by the alleged need to cover costs that the company incurs. According to Verizon, its proposals are "narrowly targeted" and are designed to "simplify" unnecessary rate complexity.[38] Indeed, with respect to the proposed increase in Directory Assistance charges, also rejected, the company maintained that its actions were consistent with "public interest policy" expressed by the General Assembly because they raised "charges above cost."[39]

Verizon cites Virginia Code § 56–235.5:1, which states that it is in the public interest to reduce or eliminate any requirement to price retail services at below–cost levels.[40] This Verizon argument turns reality on its head. There was no "requirement" to price directory assistance services at issue, and there was no evidence tendered (even by Verizon) that these services are priced below cost at the present time.

DOD/FEA submits that Verizon's proposals were not based on costs and they were not based on "public interest" either. Simply put, Verizon saw the opportunity to obtain increased revenue, and in its view the market forces were not great enough to prevent that outcome.

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37 *Id.*, p. 17.

38 PUC 2006–00031, Verizon Application, p. 2.

39 *Id.*

40 *Id.*

V. DESPITE VERIZON'S CLAIMS, SOME ENTERPRISE CUSTOMERS CANNOT SUBSTITUTE OTHER TECHNOLOGIES FOR CONVENTIONAL WIRELINE SERVICES.

A. Wireless services are not a substitute for most business users.

Verizon contends that much of the recent increase in competition is by firms using alternative platforms. However, DOD/FEA's witness emphasized that when looking at intermodal competition, it is important to distinguish between services to residential users and services to business users.[41] Unfortunately, business users often do not benefit as much as residential users from intermodal competition.[42]

For example, Verizon states that 55 percent of businesses in Virginia use wireless service.[43] However, DOD/FEA's witness explained that the percentage of businesses and government agencies that have "cut the cord" and totally abandoned wireline service is *de minimus*.[44] Although people working in some occupations, such as sales, installation and maintenance, make extensive use of "cell phones", most business users of any size require one or more wireline connections at their home base. Thus, for most business users, wireless service is a complement to wireline service.[45] Lack of directory listings that give information to customers and potential buyers, differences in E911 service location procedures, and "dead zones" with unreliable or low quality connections are among the factors that make wireless a "complement" instead of a "substitute" for nearly all business users.[46]

41 Exhibit No. 112, p. 13.

42 *Id.*, pp. 13–16.

43 Exhibit No. 112, p. 13, citing Exhibit No. 2, p. 12.

44 Exhibit No. 112, p. 13.

45 *Id.*

46 *Id.*, p. 14.

Moreover, DOD/FEA's witness explained that Verizon is largely competing with itself in the cell phone market.[47] Verizon Wireless is one of service largest providers in the U.S.[48] Indeed, Verizon's reports to the Securities and Exchange Commission claim that the company's activities as an "industry–leading wireless provider" are highly profitable.[49]

Verizon counters positions by DOD/FEA and other parties concerning wireless services by pointing to substantial increases in the use of this technology in recent years. For example, Verizon witness Robert W. Woltz, Jr. states that in 1999 there were twice as many incumbent LEC access lines as wireless and broadband connections, yet by the end of 2006 there were over twice as many connections to residences and businesses with these two "new" technologies as with wireline access lines.[50]

DOD/FEA does not dispute these statistics. However, it is <u>in</u>disputable that for the vast majority of business users, wireless is a <u>complement</u> to wireline service, rather than a substitute. DOD/FEA's witness stated that he could not recall ever being in an office where there was no evidence of wireline service.[51] Moreover, a CWA witness explained that wireless service is commonly included in bundled service packages along with wireline service.[52] The witness noted:

> If wireless service was a comparable substitute for wireline service, it would not be necessary to offer a bundle that included wireline services because consumers would refuse to pay for redundant comparable services.[53]

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47 *Id.*

48 *Id.*

49 *Id.*

50 Rebuttal Testimony of Robert W. Woltz, Jr., ("Exhibit No. 294"), p. 3.

51 Exhibit No. 112, p. 14.

52 Exhibit No. 126, p. 94.

53 *Id.*

Thus, inclusion of both wireless and wireline services in the same bundle is evidence that wireless is complementary to wireline service, not a replacement.

B. Cable services are principally targeted to residential consumers.

In addition, DOD/FEA's witness observed that the services offered by cable companies are often not a significant element of the competitive marketplace for business users.[54] Since cable companies have been providing entertainment services to homes over the years, cable companies are better positioned to market telecom services to residential users through sales promotions. For example, cable companies often employ the "Triple Play" strategy of Entertainment, High-Speed Internet Access, and Digital Telephony as a combined service offering.[55]

Moreover, many commercial and government organizations do not want to have "television" in their facilities because of the potential distraction to employees.[56] Also, cable telephony has additional shortcomings for business users. For example, as with wireless, there are no directory listings. Also, cable services, unlike traditional wireline services, are disabled by localized power outages, making cable a questionable choice for business and government users who must have the highest possible availability.[57]

Exhibit No. 58 is promotional material for Cox Communications in Fairfax County, which highlights Cox's "Preferred Bundle" consisting of digital cable, High–Speed Internet access, and local telephone service combined at $99.99 a month.[58] However, a witness for Cavalier Telephone explains that cable does not provide "a realistic service alternative" to basic exchange service as a consequence of bundling.[59]

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54 Exhibit No. 112, p. 14.

55 *Id.*, pp. 14–15.

56 *Id.*, p. 11.

57 *Id.*

58 Exhibit No. 58.

59 Testimony of Martin W. Clift, Jr., June 1, 2007 ("Exhibit No. 140"), Exhibit A, p. 3.

The consumer is obliged to pay for parts of the bundle that are not needed, and also usually required to obtain service for a substantial minimum period, or else incur forfeiture penalties.[60]

Competition is limited by the additional factor that cable providers cannot economically provide services to any subscriber, large or small, which is located distant from where the company has facilities in the street.[61] In most municipalities, only a single cable carrier has been given a franchise to provide these services. Thus, competition to Verizon from this technology sector is generally limited to a single company.

Moreover, as a witness for the Staff has observed, regulators of the telephone industry in Virginia and elsewhere have acted to prevent monopoly profits and encourage universal service. This has had the effect of "lowering prices and expanding the market to encompass nearly every business and household."[62] In contrast, the historic pricing practices of the cable industry are oriented towards profit maximization.[63] The cable industry has set prices "which seem attractive to some, barely tolerable to others, and grossly excessive to still others."[64] Basically, the cable industry has a long history of charging "whatever the market will bear."[65]

Indeed, Verizon's own hearing exhibit shows that cable firms have not been very active in bidding to provide telecommunications services even at major military installations. Exhibit No. 115 shows that no cable telephone firms submitted proposals

60 *Id.*

61 *Id.*

62 Direct Testimony of Ben Johnson, June 27, 2007 ("Exhibit No. 192"), p. 82.

63 *Id.*

64 *Id.*

65 *Id.*

to provide services to Fort Lee, and that only <u>one</u> cable firm, Cox Communications Hampton Roads LLC, submitted a bid to provide services at Fort Monroe.

C. VOIP is not suitable for some business users.

DOD/FEA's witness explained that Voice over Internet Protocol ("VoIP") services have a number of shortcomings that many business users must consider.[66] These include lack of directory listings and susceptibility to localized electric power outages. Also, use of VoIP may depend on the operational status of the subscriber's computer, or in the case of a larger business, the subscriber's computer <u>network</u>. If there are "computer problems," *VoIP service may be curtailed for a long period* while the problems are addressed. Moreover, if VoIP access is required at multiple locations, the business user would often need to acquire multiple dedicated broadband connections, which would typically involve monthly charges of two or three hundred dollars a month <u>each</u>, or possibly more, depending on the distance between the user's location and the serving telephone company central office.[67]

Verizon responded with a hearing exhibit indicating that some business users have requested proposals for VoIP services. Indeed, Exhibit No. 121, introduced by Verizon during its examination of DOD/FEA's witness, is a solicitation by the Social Security Administration to replace its current telephony systems at specified sites with a "VoIP telephony solution."[68]

DOD/FEA acknowledges that VoIP has been the preferred approach for some federal agencies and other business users in <u>some</u> applications. However, a number of business users are dependent upon traditional wireline solutions for <u>other</u> applications. This diversity is illustrated by the NETWORX Program of the U. S. General Services

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66 Exhibit No. 112, p. 15.

67 *Id.*

68 Exhibit No. 121, p. C-8.

Administration ("GSA"), summarized in Exhibit No. 122, which was also introduced by Verizon during its examination of DOD/FEA's witness.

NETWORX actually consisted of two large procurements — NETWORX Universal and NETWORX Enterprise. The NETWORX Universal procurement meets the needs of some federal agencies to have one supplier providing a full range of service offerings with national and international coverage. Mandatory services for NETWORX Universal include a number of Communications Transport services which are not IP–based, as well as IP–based services and certain wireless services. In contrast, NETWORX Enterprise offerors must bid a core set of IP or wireless services to their own specified geographic profile.

In March 2007, GSA announced that three firms received NETWORX Universal Awards: AT&T Corp., MCI Communications, Inc. d/b/a Verizon Business Systems, and Qwest Government Services. On May 31, 2007, GSA made NETWORX Enterprise awards to these same firms, as well as to Level 3 Communications and Sprint Nextel. The large incumbent LECs, such as Verizon, AT&T, and Qwest, have the capability to provide IP–based services. But, none of the non–facilities based or "over–the–top" providers who offer services over the web, such as Vonage or Packet8, received NETWORX Universal or Enterprise awards.

VI. THE COMMISSION SHOULD DENY VERIZON'S REQUEST BECAUSE OF SERVICE QUALITY DEFICIENCIES IN VIRGINIA.

A. *There is abundant evidence of shortcomings with Verizon's service.*

DOD/FEA's witness explained that reports by Verizon's competitors show that the company's service levels have been deficient.[69] For example, DOD/FEA's witness explained that Cavalier Telephone, L.L.C. ("Cavalier"), submitted comments in the

69 *Exhibit No. 112, pp. 18–20; p. 28.*

instant case on April 20, 2007 opposing Verizon's application.[70] Cavalier stated that Verizon had embarked on an effort to cut competition by wireline LECs through forbearance petitions, unreasonable pricing, plant retirements, and back-billing practices which make it difficult for competitive LECs to participate in the Virginia markets.[71] Also, Verizon had attacked another mode of competition through actions against VoIP providers such as Vonage.[72] DOD/FEA's witness stated that while a certain amount of quarreling among competitors must be expected, the Commission should place heavy weight on actions by Verizon to reduce competition when it evaluates Verizon's proposals to reduce regulation of services in Virginia.[73]

Moreover, DOD/FEA's witness observed that Cavalier's observations are confirmed by reports of an additional competitor.[74] On April 19, 2007, the NTELOS Companies, NTELOS Network Inc. and R&B Network Inc. ("NTELOS CLEC") submitted comments in the instant proceeding concerning the status of competition in Virginia.[75] NTELOS CLEC states that even with a network that includes 2,000 route-miles of fiber optic cable and its own switching platforms, it must rely on other carriers for facilities and access to customers in many instances.[76] Also, NTELOS Wireless has a policy of seeking alternative vendors for high-capacity circuits and using Verizon only after exhausting its alternatives.[77] This reluctance likely reflects "surprise" back-billings for substantial amounts which NTELOS CLEC has experienced.[78] The reluctance also

70 *Id.*, p. 18.

71 *Id.*

72 *Id.*

73 *Id.*, p. 19.

74 *Id.*, p. 20

75 *Id.*

76 *Id.*, p. 4.

77 *Id.*

78 *Id.*

may reflect NTELOS CLEC's assessment that "Verizon is high-priced, not customer–focused and generally a difficult vendor with which to do business."[79] Unfortunately, however, from NTELOS CLEC's perspective, there are no alternatives to Verizon in many instances, even in markets such as Richmond, Virginia Beach, and Hampton Roads, which Verizon has classified as the most competitive.[80]

In addition to complaints by Verizon's competitors, there are also reports of service deficiencies from an entirely different segment — the company's employees. A witness for CWA, which represents 7,000 Verizon employees in Virginia, stated:

> ". . . Verizon Virginia, Inc. and Verizon South (collectively Verizon) are not providing quality service today to the vast majority of Verizon customers who continue to rely on the traditional copper network for basic voice service."[81]

The witness postulates that Verizon is pursuing this policy so that it can focus its resources on a "fiber to the premises" service called FiOS.[82] DOD/FEA believes that this is a logical explanation, but the reason for Verizon's policy is not nearly as important as the result of this policy. The significant fact is that Verizon is allowing its physical plant to deteriorate needlessly. This deterioration harms end users including federal agencies who use communications services, and it also restrains competition (and Verizon's competitors) in Virginia.

B. High service quality is particularly important to DOD/FEA.

As a large enterprise user, DOD/FEA is directly concerned with the quality of telecommunications services throughout Virginia. A business user employing contracts to acquire a volume of service at a given location may have leverage over the quality of service at that location and other locations under the contract. But there are <u>two ends</u>

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79 *Id.*

80 *Id.*

81 Exhibit No. 127, pp. 2–3.

82 *Id.*, p. 3.

to any call. A business user makes calls to and receives calls from other business users and members of the public who are not under contract, many of whom are receiving services from Verizon. The quality of the services rendered at these off-net points has a direct impact on the quality of communications to and from the contract user.

Federal organizations, within and outside DOD, have many requirements to communicate with individuals, commercial businesses, and state and local government agencies to perform their missions and to meet their responsibilities to the public. Thus, federal agencies have a direct interest in all aspects of the quality of services provided by Verizon throughout its entire network.

Moreover, the quality of services that Verizon provides to its <u>competitors</u> is of vital concern to DOD/FEA as <u>end users</u> of Verizon's services. DOD/FEA's witness explained that actions by Verizon to reduce the amount of competition, or possibly drive competitors out, will place further restrictions on the number of choices available to end users.[83] This will negatively impact the efficiency of competitive procurement practices which DOD/FEA and other large consumers use whenever possible.[84]

Also, DOD/FEA's witness explained that procurements of Verizon's services by carriers are similar in several respects to procurements of Verizon's services by large end users.[85] In both cases, the "consumer" is usually obtaining a substantial volume of services, and probably making commitments to obtain services over some period of time. Thus, if carriers are having difficulties in their arrangements with Verizon, it is likely that business end users will be encountering many of the same problems. For

83 Exhibit No. 112, p. 20.

84 *Id.*

85 *Id.*

this additional reason, competition is not ready to substitute for continuing the current level of Commission surveillance.[86]

VII. VERIZON'S EFFORTS TO DECOMMISSION PLANT PROVIDE AN ADDITIONAL REASON FOR REJECTING THE COMPANY'S DEREGULATORY PROPOSALS.

Competitive LECs in Virginia report that Verizon has been taking steps to reduce opportunities for competition to develop by decommissioning plant which competitors could use to provide services to their own subscribers. For example, a Cavalier witness describes "forbearance petitions" to the FCC that would eliminate Verizon's obligations to provide UNEs in the Virginia Beach market and several Verizon markets in other states.[87] The witness explains that forbearance in Virginia Beach, and Verizon's systematic retirement of copper plant, serve to eliminate competition based on use of UNEs, on which Cavalier and other competitive LECs depend.[88]

Another competitor, XO Communications, Inc. ("XO"), also provided testimony on Verizon's policies regarding elimination of plant in service. An XO witness explained that Verizon and other incumbent LECs have systematically begun to decommission copper plant where they have deployed fiber, or hybrid-fiber, facilities over top of copper loops.[89] By this action, Verizon is denying XO and other competitors any opportunities to access these "last-mile" facilities.[90]

Reports by two wireline competitors that Verizon is taking steps to cut the amount of plant that could be used to allow more competition in Virginia provide a strong reason for the Commission to deny Verizon's requests to reduce surveillance

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86 *Id.*

87 Exhibit No. 140.

88 *Id.*, Exhibit A., p. 10.

89 Testimony of Gary Case, June 1, 2007, ("Exhibit No. 110 - Redacted"),p. 23.

90 *Id.*

over local services in the Commonwealth. Moreover, the reports by Cavalier and XO complement each other well, because these two competitors focus on totally different markets. Cavalier's witness explains that the company "is unique in that its serves residential customers, including traditional customers of plain old telephone service or "POTS" and those without cell phones, high speed Internet, or cable."[91] In contrast, XO's witness explains that "XO operates only in the enterprise market, serving businesses that utilize our telephone and advanced communications services, and does not provide service to residential customers in Virginia."[92] If facilities for competitors to provide services to <u>either</u> residential or business consumers are not available, there will indeed be little effective competition to Verizon in the Commonwealth. For this additional reason, DOD/FEA urges the Commission to maintain close surveillance over Verizon's activities, and to continue the existing regulatory framework, which has fostered economic development in Virginia.[93]

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91 Exhibit No. 140, Exhibit A, p. 2.

92 Exhibit No. 110 – Redacted, p. 3.

93 Exhibit No. 112, p. 23.

VIII. CONCLUSION

WHEREFORE, the premises considered, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Commission to adopt the recommendations in this Reply Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Post-Hearing Brief on behalf of the consumer interest of the United States Department of Defense and All Other Federal Executive Agencies and transmittal letter was sent to the parties on the attached service list by first class mail, postage prepaid, on September 13, 2007.

Dated at Arlington, VA on this 13th day of September, 2007.

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